IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PHILIP LAKOSKY, for himself and those similarly situated,

Plaintiff,

vs.

DISCOUNT TIRE CO., INC. d/b/a Discount Tire, an Arizona Corporation, and REINALT-THOMAS CORPORATION d/b/a Discount Tire/America's Tire, a Michigan Corporation,

Defendants.

CASE NO 2:14-cv-13362-SFC-MJH

HON. SEAN F. COX

MAGISTRATE JUDGE
MICHAEL J. HLUCHANIUK

JOINT SUPPLEMENTAL BRIEFING ON COURT APPROVAL OF SETTLEMENTS UNDER FLSA

Pursuant to this Court's order on June 30, 2015, the Parties jointly submit supplemental briefing on the following two issues with respect to Court approval of settlement agreements under the FLSA: (1) "whether the parties were engaged in a *bona fide* dispute and that the settlement is a fair and reasonable compromise of the issues presented;" and (2) "the reasonableness of Plaintiff's attorney's fees and costs."

I. WHETHER THE SETTLEMENT IS A FAIR AND REASONABLE RESOLUTION OF A BONA FIDE DISPUTE

"As a general rule, employees' claims under the FLSA are non-waivable and may not be settled without supervision of either the Secretary of Labor or a district court."[1] Approval is warranted when, after review, the district court is satisfied that the settlement is fair.[2]

A threshold issue for approval of a settlement is whether the parties have a *bona fide* dispute over wages.[3] This factor is regularly satisfied by, among other things, looking to the allegations and defenses in the parties' pleadings and motions.[4] In *Shaffer*, for example, the district court concluded that a *bona fide* dispute over wages existed because the parties maintained in the pleadings that plaintiffs were non-exempt employees who were not paid for all overtime hours and the defendant denied these claims.[5]

Similarly, in this case, the pleadings and motions demonstrate that Plaintiff was employed by Defendant Discount Tire from May of 2002 until April of 2014.[6] For the last 8 years of his employment, Plaintiff's title was Assistant Manager, a non-exempt position.[7] Plaintiff alleges that he was not properly compensated for hours worked in excess of 40 because, among other things, Defendant Discount Tire improperly utilized the fluctuating workweek method to calculate the Assistant Managers' pay. Defendants deny these allegations, and moved for partial dismissal of Plaintiff's claims.[8] Defendants' motion to dismiss was pending before the parties reached a settlement.[9] Under relevant Sixth Circuit authority, Plaintiff and Defendants have a *bona fide* dispute.[10]

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[1] *Snook v. Valley OB-Gyn Clinic, P.C.*, Case No. 14-cv-12301, 2015 WL 144400, *1 (E.D. Mich. Jan. 12, 2015) (citation omitted).
[2] *Id.*
[3] *See, e.g., Gongora v. 1st Sec. Services of Ohio Corp.*, Case No. 5:14-cv-2325, 2015 WL 3507950, *1 (N.D. Ohio June 3, 2015); *see also Gentrup v. Renovo Svcs. LLC*, Case No. 1:07CV430, 2011 WL 2532922, *3 (S.D. Ohio June 24, 2011).
[4] *Bradford v. Legacy Health Svcs.*, Case No. 1:13CV218, 2014 WL 6473588, *3 (N.D. Ohio Nov. 18, 2014) ("the Court finds the pleadings and motions demonstrate that the instant action presents a bona fide dispute); *see also Shaffer v. LCPZ Canton, Inc.*, Case No. 5:14 CV 2304, 2015 WL 23654, *2 (N.D. Ohio Jan. 16, 2015).
[5] *Shaffer v. LCPZ Canton, Inc.*, 2015, WL at *2.
[6] Pl. Comp., ¶ 7.

Further, the settlement proceeds outlined in the settlement agreement – which the Court permitted to be filed under seal[11] – when "taken as a whole [are] fair, adequate, and reasonable."[12] This is particularly true given the uncertainty surrounding continued litigation and Defendants' pending motion to dismiss.[13]

The parties arrived at settlement after arms' length negotiations, which took place over a period of months, and each party was represented by experienced and reputable counsel.[14] This "ensur[es] that the employee's interests were adequately protected from any overreaching" prior to settlement.[15] Finally, where counsel for both parties "believe that the settlement is fair and reasonable," the scales are tipped in favor of approving the settlement.[16] Counsel for both parties represent that the settlement is fair and reasonable, and the joint motion should be granted.

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[7] *Id.*, ¶¶ 7, 24.

[8] *See* Dkt. No. 10.

[9] Based on current information, Defendants also intended to file a motion for summary judgment under Fed. R. Civ. P. 56.

[10] *See Bradford*, *Shaffer*, and *Snook v. Valley OB-Gyn Clinic, P.C.*, 2015 WL at *1 ("… the Joint Motion and Snook's complaint reflect that the parties did have a *bona fide* FLSA dispute.").

[11] *See* Text-Only Order issued on May 29, 2015.

[12] *Gentrup v. Renovo Svcs. LLC*, 2011 WL at *3.

[13] *See Bradford v. Legacy Health Svcs.*, 2014 WL at *3; *see also Id.*

II. THE REASONABLENESS OF ATTORNEY'S FEES AND COSTS

The attorney's fees outlined in the settlement agreement are reasonable, particularly "given the early stage at which the case settled before fees and expenses associated with discovery, motion practice, and possibly a trial, were incurred."[17] Moreover, Plaintiff incurred significant fees in connection with Defendants' motion to dismiss pleadings. The fact that the attorney's fees called for in the settlement are greater than the amount Plaintiff will recover does not alter this conclusion.[18] Indeed, "the possibility of an attorney's fee that eclipses any overtime pay award should add to the incentive for an employer to make a quick and just resolution of even the most minor overtime claims."[19]

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[14] Counsel for Defendants, Rob Friedman, devotes a significant part of his practice to litigating complex wage and hour collective and class actions in state and federal courts across the country. *See* Biography of Robert F. Friedman, available at www.littler.com/people/robert-f-friedman. Counsel for Plaintiff, Dale Burmeister, has represented businesses and individuals in class litigation for more than 20 years.

[15] *Thompson v. United Stone, LLC*, Case No. 1:14-CV-224, 2015 WL 867988, *2 (E.D. Tenn. March 2, 2015).

[16] *Gentrup v. Renovo Svcs. LLC*, 2011 WL at *3. Further, prior to engaging in settlement discussions, Defendants transmitted all of Plaintiff's payroll records for the relevant time period, ensuring that Plaintiff's counsel had all of the necessary information to represent Plaintiff's interest during negotiations. This also favors approval of settlement. *Id.*

[17] *Shaffer v. LCPZ Canton, Inc.*, 2015 WL at *2; *see also Gongora v. 1st Sec. Services of Ohio Corp.*, 2015 WL at *2.

In this case, the attorney's fees provided for in the settlement are only slightly greater than the amount Plaintiff will receive in compromise of his disputed wage claims. Finally, Plaintiff's counsel's hourly rate of $350 has been approved by courts in several jurisdictions many times within the past several years.[20] The fees are therefore reasonable in the circumstances, and the parties request that their joint motion be granted.

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[18] In *Thompson*, the parties resolved Plaintiff's wage claims for a total of $1,900.00, while Plaintiff's claim for attorney's fees was resolved for a total of $7,500.00. *Thompson v. United Stone, LLC*, 2015 WL at *2. The settlement therefore provided for an amount in attorney's fees that was almost four times greater than what Plaintiff received for his disputed wages. This, however, did not render the amount of attorney's fees unreasonable. *Id.* (collecting cases).

[19] *Id.*

[20] *See, e.g., Marrotta v. Suffolk County*, 726 F.Supp.2d 1, 5 (D. Mass. 2010); *Sniffen v. Spectrum Indus. Svcs.*, Case No. 2:06-cv-622, 2007 WL 2206560, *3 (S.D. Ohio July 30, 2007). Plaintiff's counsel's firm has been involved in several wage and hour settlements before the Chief Judge and other Judges of this District wherein this rate was openly discussed and tacitly approved during settlement conferences. Further, Plaintiff's counsel has devoted a substantial amount of time to Plaintiff's case over the past year, and the fee amount in the settlement agreement represents less than the actual amount Plaintiff's counsel has spent representing Plaintiff in this matter.

Dated this 21st day of July, 2015.

Respectfully Submitted,

/s/ Dale R. Burmeister (w/ permission)
Dale R. Burmeister (P29432)
Jason R. Mather (P66022)
HARVEY KRUSE, P.C.
1050 Wilshire Drive
Suite 320
Troy, Michigan 48084
Telephone: (248) 649-7800
Facsimile: (248) 649-2316
dburmeister@harveykruse.com
jmathers@harveykruse.com

ATTORNEYS FOR PLAINTIFF

Respectfully Submitted,

/s/ Robert F. Friedman
Robert F. Friedman
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Lock Box 116
Dallas, Texas 75201-2931
Telephone: (214) 880-8100
Facsimile: (214) 880-0181
rfriedman@littler.com
jyoupa@littler.com

ATTORNEYS FOR DEFENDANTS

Firmwide:134818904.1 020327.1089